No. 95-641

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In The

Supreme Court of the United States

October Term, 1995

THREE SISTERS SPORTSWEAR CO., BEDFORD CUTTING MILLS, INC., THREE SISTERS APPAREL CORP., METROPOLITAN SWEATER INDUSTRIES, INC., UNITED KNITWEAR INDUSTRIES, INC., SKYLIGHT FASHIONS, INC. d/b/a SKYLIGHT TRADING and 144 SPENCER REALTY CORP.,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD and INTERNATIONAL LADIES' GARMENT WORKERS UNION, AFL-CIO,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF IN OPPOSITION FOR RESPONDENT INTERNATIONAL LADIES' GARMENT WORKERS UNION, AFL-CIO

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QUESTIONS PRESENTED

1. Does the Board abuse its broad remedial authority by fashioning union access rights onto private employer property to remedy repeated episodes of flagrant unfair labor practices at that facility?

2. Is the Board obligated to set forth a special rationale to support union access rights when episodes of serious unfair labor practices are separated by only eight (8) years?

3. In the context of the garment industry, is each alter ego corporate entity which forms a single integrated enterprise within the reach of the Board's powers to remedy the enterprise's unfair labor practices?

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BRIEF IN OPPOSITION FOR RESPONDENT INTERNATIONAL LADIES' GARMENT WORKERS UNION, AFL-CIO

Respondent International Ladies' Garment Workers Union, AFL-CIO ("ILG")[1] opposes the petition for a writ of certiorari submitted by Petitioner ("Employer") in this case. It is noteworthy that the United States Court of Appeals for the District of Columbia Circuit rejected these same baseless assertions without opinion only days after oral argument. It is respectfully contended that there is so little likelihood of this petition being granted that it is frivolous, and that it is only intended to further delay the inevitable point when this rogue employer will be called to account for the flagrant and abusive unfair labor practices to which it subjected its employees.[2]

STATEMENT OF THE CASE

Petitioners raise three questions for review. The first two questions expressly challenge the Board's remedial authority, even in the face of repeated flagrant unfair labor practices, to order effective relief which includes limited ILG access rights to the Employer's premises for the purpose of conducting a union organizing campaign. The third question presumes that the Board cannot include a corporation it has found to be both an alter ego and a component of a single integrated enterprise within the scope of its remedial orders, unless such corporation is shown to have exercised joint control over the labor relations of the direct corporate employer.

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1. The ILG was an intervenor below. It is now known as the Union of Needletrades, Industrial and Textile Employees ("UNITE").

2. The patent frivolity of this petition warrants an award of damages and double costs under Supreme Court Rule 42.2, formerly Rule 49.2. *See In re Amendment to Rule 39*, 500 U.S. 13 (1991); *Hatch v. Reliance Insurance Co.*, 474 U.S. 1048 (1986); *Hyde v. Van Wormer*, 474 U.S. 992 (1985). No effort was made to establish any of the reasons for granting a petition which are identified in Rule 10. The petition blatantly misrepresents critical facts concerning the ability of these employees to receive union literature at the workplace and misconstrues the relevant precedents. Though this conduct may be excusable from a *pro se* litigant, it is unacceptable from a member of this Bar.

The petition does not contest the Board's findings that Petitioners:

- ordered and instructed employees not to accept and to rip up literature from the ILG (SA 96);[3]
- promised employees benefits to assist the Petitioner in sponsoring a sweetheart union alternative to ILG (SA 96);
- threatened workers with discharge and factory closure if they supported the ILG (SA 96-97);
- threatened employees with unspecified reprisals if they spoke to employees who supported the ILG (SA 97);
- interrogated employees concerning their activities and support for the ILG (SA 97);
- created the impression among employees that activities on behalf of the ILG were under surveillance (SA 97);
- discharged Carmen Nieves, Bella Martinez, Israel Galarza, Silvia Silverio and Rosita Chalston because of their support for the ILG (SA 97-98);
- verbally abused, physically assaulted and harassed because of their ILG activities (SA 97-98).

This striking series of egregious unfair labor practices is matched point for point by Petitioners' conduct in a prior corporate form known as Southland-Metro. The Board's

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3. References to the Appendix will be denoted "A." References to the Supplemental Appendix will be denoted "SA."

decision finding that Southland-Metro made many of the exact same threats and unlawfully discharged 88 employees because of their support for the ILG is reported at 260 NLRB 642 (1982).

Petitioners' Questions concerning the Board's remedial authority are thus raised in a context of viciously anti-union conduct which the ALJ and the Board have expressly found cannot be remedied through backpay, recall and "the mere posting of a notice" which informs employees of their rights under the law (SA 107-108; A 2).

I. Relevant Factual Summary

A. The Pre-1988 Conduct

In 1980, the ILG began an organizational campaign at Southland Knitwear Inc., which was a part of an integrated group of corporations including Metropolitan Industries, Inc. *Southland Knitwear Inc.*, 260 NLRB 642 (1982). In response, the owners of Southland- Metro, including Jack, David and Beirel Jacobowitz, discharged 88 ILG supporters, threatened plant closure if the employees supported the ILG, and in various ways interfered with ILG organizational activity and campaigning. The Board concluded that Southland-Metro had committed "egregious and widespread unfair labor practices" (SA 6-7). These unfair labor practices (and the prospect of the backpay owed to 88 discriminatees) apparently caused the Jacobowitz family which owned Southland-Metro to create other corporate entities with which to conduct its sportswear manufacturing business. The ALJ found and Petitioner does not here deny that Three Sisters and the other corporations "are simply a continuation of the Southland-Metro business operations" created in "nothing more than an obvious attempt to insulate Three Sisters from liability for Southland-Metro's unfair labor practices" (SA 29).

B. The 1988 Campaign

At the time of the 1988 campaign, the Petitioners again resorted to coercive and unlawful conduct intended to deprive their employees of the right to freely select their bargaining agent. In pertinent part, the ALJ found and the Board agreed that Petitioners committed unfair labor practices so flagrant and extensive that the mere "posting of a notice would not be sufficient" as a remedy (SA 107-108). Petitioners discriminatorily terminated five unit employees who were known ILG supporters. The discharge of ILG adherent Carmen Nieves occurred "in a particularly reprehensible" fashion involving a "barrage of obscenities" and physical detention by Petitioners' two highest officials (SA 108). Discriminatee Bella Martinez was also subject to humiliating insults during her unlawful termination, with Beirel Jacobowitz calling union supporters "cockroaches and insects" and physically assaulting Ms. Martinez by pushing her from her chair (SA 108). Discriminatee Rosita Chalston was subject as well to what the ALJ deemed "the almost inhuman practice" of forcing her to keep her head and eyes focused down throughout the workday lest she make eye contact with another worker (SA 108).

Petitioners' contention that special access remedies are unwarranted because ILG representatives "openly enlisted the support of Three Sisters employees and freely distributed leaflets and other literature to the employees on and near the plant's premises" is a flat-out misrepresentation, exceeded in its enormity only by the breath-takingly false statement that "Three Sisters principal, Beirel Jacobowitz, did nothing to hamper the ILG's distribution of ILG literature on the premises."[4] Petition at

4. Petitioners cite pp. 53-54 and 57-58 of the Court of Appeals Exhibit Volume in support of this factual assertion. In that portion of the record, Gloria Soto testifies that ILG representatives on the public sidewalk outside the plant handed out leaflets to employees as they left work, while Beirel Jacobowitz stood at the door observing.

5-6. The ALJ's opinion, which was adopted by the Board and enforced below, makes clear that Beirel Jacobowitz:

(1) instructed employees not to take ILG leaflets (SA 43, 65);

(2) instructed employees to rip up any ILG leaflets (SA 43);

(3) advised employees that he would shut down the plant and fire everyone because of the ILG organizers passing out leaflets outside the plant (SA 44);

(4) mentioned the "people outside" while physically attacking Bella Martinez, in what the ALJ concluded was an obvious reference to the ILG representatives distributing literature outside the plant (SA 68).

It is impossible to square this reprehensible record with the assertion in the petition that Beirel Jacobowitz "did nothing to hamper the ILG's distribution of ILG literature on the premises."

C. The Status of Spencer Realty

Petitioners contend that Spencer Realty should not have been deemed a "single employer" with the various sportswear manufacturing corporations because it had no employees of its own and did not exercise labor control over the employees of Three Sisters or Bedford. Of course, the ALJ found that Spencer Realty is "part of the single integrated enterprise with *and is an alter ego of* the other Petitioner corporations" (emphasis supplied) (SA 38). This alter ego finding (which Petitioners only barely contest as an afterthought at note 15 of their Petition) renders academic Petitioners' single-employer concerns because the remedies ordered by the Board apply to Spencer Realty as an alter ego of the direct employing corporations.

In any event, the record overwhelmingly demonstrates that both the alter ego and single-employer findings are appropriate. Spencer shares office space, clerical employees and accounting services with the other Petitioners. It had the same federal taxpayer ID number as the 1980 corporate entities involved in the Southland-Metro case. It is owned and managed by the same Jacobowitz family members who own and manage the other Petitioners. It had a less than arms-length business relationship with the other Petitioners which included a lack of leases for the Petitioners (as opposed to unrelated entities with which it did business), unexplained periods of rental reduction and/or rent being paid by Petitioners, and substantial unexplained and unrepaid loans from the other Petitioners to Spencer. Finally, the record demonstrates a commingling of records from the other Petitioners in the so-called Spencer files (SA 37). None of these conclusions are or could be challenged by Petitioners. They occur in a context in which Spencer's owners have been expressly adjudicated to have previously engaged in corporate manipulations solely for the purpose of frustrating the enforcement of the Board's 1982 Order in the Southland-Metro litigation. These facts compel the conclusion that these corporations were alter egos of one another and part and parcel of a single, integrated enterprise.

REASONS FOR DENYING THE WRIT

The three arguments Petitioners assert in support of their petition are contradicted by long-settled and uncontroversial legal principles, and are utterly unsubstantiated by the record. Contrary to Petitioners' assertion, the Board amply justified the union access remedies it ordered. Further, the extensive and flagrant unfair labor practices committed render inapposite the private property interests Petitioners articulate in reliance on this Court's decision in *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956).

Petitioners also argue that the Board exceeded its discretionary remedial authority because the unfair labor practices committed were insufficiently intimidating and coercive to warrant union access remedies. The record evidence of repeated unfair labor practices involving threats, discharges, other retaliation, and abusive and degrading conduct demonstrates that this assertion is meritless. This contention also ignores Congress' express delegation to the Board of the primary authority to craft the remedies it concludes are necessary to dissipate the impact of unlawful employer conduct.

Finally, Petitioners contend that the Board erred in finding that 144 Spencer Realty Corp. was part of their single integrated enterprise, because of the absence of common control by Spencer over the enterprise's labor relations. This argument is belied by the Board's finding that 144 Spencer Realty Corp. was both an alter ego of and a single employer with the other Petitioning entities, by the record itself, and by the context of the garment industry in which the enterprise conducts its business.

I.

THE UNION ACCESS REMEDIES THE BOARD TAILORED TO CURE THE EFFECTS OF PETITIONERS' FLAGRANTLY UNLAWFUL CONDUCT WERE WELL WITHIN ITS BROAD REMEDIAL AUTHORITY.

The access remedies fashioned by the Board to ameliorate the effects of Petitioners' egregious unfair labor practices were plainly within the wide scope of the agency's remedial authority. The Board adequately established that the effects of the outrageous unfair labor practices committed by Petitioners required limited rights of union access to the Employers' premises in order to ensure that these workers may freely exercise their Section 7 rights without fear of reprisal. 29 U.S.C. § 157.

As such, the Board did not abuse its broad discretionary remedial authority in ordering union access to Petitioners' facility.

The Board's remedial authority arises under Section 160(c) of the National Labor Relations Act, which permits the Board "to take such affirmative action . . . as will effectuate [its] policies." 29 U.S.C. § 160(c). This Court has recently held that this express Congressional edict vests the Board with "the primary responsibility for making remedial decisions that best effectuate the policies of the Act when it has substantiated an unfair labor practice." *ABF Freight System, Inc. v. NLRB*, 114 S. Ct. 835, 839, 127 L. Ed. 2d 152 (1994). In that case, this Court reaffirmed its "consistent appraisal of the Board's remedial authority throughout its long history of administering the Act," restating its rule that the Board's remedial determinations "merit the greatest deference." *ABF Freight System, Inc.*, 114 S. Ct. at 839. The Court reiterated that the Board's remedial orders should stand unless they constituted a "patent attempt to achieve ends" other than effectuating the Act's policies. *ABF Freight System, Inc.*, 114 S. Ct. at 839, *quoting Virginia Electric & Power Co. v. NLRB*, 319 U.S. 533, 540 (1943); *see also Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 216 (1964).

Petitioners' contention that "no unique problems of union access were shown" in this case, and that therefore the union access remedies ordered were inappropriate, is simply wrong. Petitioners do not challenge the Board's finding that supervisors and managers of the companies repeatedly admonished the workers against taking ILG leaflets and actually ripped such leaflets out of the workers' hands and tore them up. Nor do they challenge the Board's findings that Petitioners threatened workers with discharge and threatened to close the plant if they supported the ILG, promised workers benefits in exchange for their support for a favored union, interrogated workers concerning their activities on behalf and in support of the ILG,

created the impression that the workers were under surveillance, and discharged, verbally abused, harassed, and physically assaulted ILG supporters in retaliation for their union activities. In the context of this plethora of unfair labor practices, union access remedies are manifestly necessary in order to dispel the intimidating and coercive effects of Petitioners' unlawful conduct and ensure that the union's views will be heard. *See, e.g., Conair Corp. v. NLRB,* 721 F.2d 1355, 1360-1366, 1384-1385 (D.C. Cir. 1983), *cert. denied,* 467 U.S. 1241 (1984) (upholding union access remedies where employer threatened plant closure, discharges, and economic reprisals, solicited grievances, and discriminated against unfair labor practice strikers); *Teamsters Local 115 v. NLRB,* 640 F.2d 392, 394, 399-404 (D.C. Cir.), *cert. denied,* 454 U.S. 827 (1981) (enforcing order of extraordinary remedies where employer promised benefits, threatened discharges, discriminatorily discharged and laid off workers, and withdrew reinstatement offer to strikers).[5]

It must also be remembered that the deplorable record of unfair labor practices at issue here is merely a recapitulation of identical unfair labor practices committed by Petitioners in a previous corporate manifestation. *See generally Southland Knitwear, Inc.,* 260 NLRB 642 (1982). In fact, the Board established that Petitioners' metamorphosis into their current

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5. Other Circuits have repeatedly approved similar remedies in order to dispel the effects of an employer's unfair labor practices. *See, e.g., Monfort, Inc. v. NLRB,* 965 F.2d 1538 (10th Cir. 1992); *NLRB v. S.E. Nichols, Inc.,* 862 F.2d 952 (2nd Cir. 1988), *cert. denied,* 490 U.S. 1108 (1989); *Haddon House Food Products, Inc. v. NLRB,* 764 F.2d 182 (3rd Cir. 1985), *cert. denied,* 475 U.S. 1011 (1986); *J.P. Stevens Co., Inc. v. NLRB,* 638 F.2d 676 (4th Cir. 1980); *United Dairy Farmers Cooperative Association v. NLRB,* 633 F.2d 1054 (3rd Cir. 1980); *J.P. Stevens Co. v. NLRB,* 612 F.2d 881 (4th Cir.), *cert. denied,* 449 U.S. 918 (1980); *NLRB v. J.P. Stevens & Co., Inc.,* 563 F.2d 8 (3rd Cir. 1977), *cert. denied,* 434 U.S. 1064 (1978). There is no doctrinal split in the Circuits as to the enforcement of Board Orders providing for union access remedies.

corporate guises was accomplished for the sole purpose of evading the remedies ordered by the Board in the *Southland Knitwear* case. The overall history here indicates that Petitioners engaged in one episode of egregious unfair labor practices, manipulated the corporate form in order to evade the Board's remedial authority, and then, in a new manifestation, committed an identical set of flagrant unfair labor practices. In this context, union access remedies are necessary if the ILG is to have any hope of communicating its message to this intransigent employer's workers.

Petitioners contend that this Court's decision in *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956), requires an analysis of their "property interests" even in the face of the pervasive and flagrantly unlawful conduct described above. Settled law requires no such inquiry. On the contrary, Circuits addressing the issue have concluded that the employer's property interests discussed in *Babcock* are inapplicable in the context of a remedial order. *See NLRB v. S.E. Nichols, Inc.*, 862 F.2d 952, 962 (2nd Cir. 1988), *cert. denied*, 490 U.S. 1108 (1989); *United Steelworkers of America v. NLRB*, 646 F.2d 616, 638-639 (D.C. Cir. 1981); *Teamsters Local 115*, 640 F.2d at 400.[6] In the context of

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6. Petitioners claim that *United Steelworkers of America v. NLRB* requires that the Board "balance" the necessity for union access remedies against the employer property interests as articulated in *Babcock*. On the contrary, in *United Steelworkers of America* the District of Columbia Circuit reiterated the irrelevance of asserted property interests in the face of repeated unfair labor practices. While that court found that the property interests articulated in *Babcock* might preclude access as a remedial measure if there were no unfair labor practices found, the court stated that:

> The hallmark principle in each . . . application[] of access as a remedial measure is the necessity to offset coercive effects caused by an employer's unlawful campaign. As those effects spread and become entrenched, so too may an access remedy. In this way,

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Petitioners' repeated unlawful conduct, and their attempt to escape liability by manipulating the corporate form, their assertion of property rights can only be seen as a doctrinal smokescreen to again attempt to evade liability. There can be no doubt that union access remedies are necessary "to offset the direct consequences or effects" of Petitioners' patently unlawful discharges, threats, interrogations, surveillance, intimidation, verbal abuse, and physical assaults. *United Steelworkers of America,* 646 F.2d at 639. As the District of Columbia Circuit stated, "Having produced such effects, [Petitioners] cannot hide behind the protection of *Babcock* or private property rights." *United Steelworkers of America,* 646 F.2d at 639.

II.

NO SPECIAL RATIONALE WAS NEEDED TO JUSTIFY THE UNION ACCESS RIGHTS ORDERED TO REMEDY EPISODES OF EGREGIOUS UNFAIR LABOR PRACTICES SEPARATED BY ONLY EIGHT YEARS.

Petitioners contend that the Board abused its broad discretionary remedial authority by ordering union access remedies "despite" an eight year gap between their first and second spate of multiple, identical and egregious unfair labor practices. Any passage of time between Petitioners' unfair labor practices is both legally irrelevant and factually belied by Petitioners' unlawful conduct. Furthermore, Petitioners' various

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> grants of access are designed fully to effectuate the policies of the Act; access is ordered to remedy the effects of unlawful behavior and not to punish or deter an employer. It is clear that the principles of *Babcock* have no direct application in this setting. . . .

United Steelworkers of America, 646 F.2d at 638.

attempts to distinguish their reprehensible conduct from that of other employers subject to similar remedial orders are meritless.

Petitioners assert that the Board's refusal to specifically evaluate the impact of an eight year gap between the commission of unfair labor practices amounted to an abuse of the agency's discretionary remedial authority. This contention is particularly ironic, in that the unfair labor practices committed by Petitioners in 1980 in their *Southland Knitwear* corporate guise were unremedied for eight years precisely because Petitioners sought to evade the Board's order in that case by creating alter ego entities.[7]

Petitioners' contention that the "passage of time" between episodes of unlawful conduct must be considered before union access remedies are imposed is specious. The one case relied upon by Petitioners involved the imposition of union access remedies at far away locations in response to a "relatively minor" unfair labor practice committed by an employer which had committed serious infractions elsewhere. *United Steelworkers of America,* 646 F.2d at 624, 619-624. There, the District of Columbia Circuit ordered the Board to factually substantiate the need for company-wide access remedies, and set forth specific criteria for the Board's consideration. *United Steelworkers of America,* 646 F.2d at 639-640. This case, by contrast, involves union access remedies at one facility ordered to ameliorate the effects of repeated massive violations at that facility of Sections 8(a)(1), 8(a)(2), 8(a)(3), and 8(a)(4) of the National Labor Relations Act. The special criteria employed in cases which involve company-wide access remedies ordered in response to unfair labor practices committed at one facility are irrelevant.

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7. Furthermore, the Board found that in 1985 Petitioners instructed a worker not to engage in activities on behalf of the ILG and paid her to solicit support for a favored union. Therefore, their contention that they committed no unfair labor practices between 1980 and 1988 is erroneous (SA 43).

Petitioners' other attempts to distinguish their outrageous conduct from that of other employers subject to union access remedies are equally unavailing. Petitioners claim that the union access remedies ordered were inappropriate because they should be construed as a "first offender" as opposed to a "hardened recidivist." This argument fails because the critical inquiry in reviewing the Board's remedial orders is the effect of the employer's unfair labor practices on employees. *Teamsters Local 115*, 640 F.2d at 399. The length and frequency of the unlawful conduct is immaterial. *Teamsters Local 115*, 640 F.2d at 399 ("an employer who strikes the first blow hard enough may not need to strike another"). As such, the District of Columbia Circuit in *Teamsters Local 115* rejected the employer's contention that the imposition of union access and notice remedies on employers with a long history of recidivism constituted "a policy of indulgence toward first offenders." 640 F.2d at 399, n. 8. Furthermore, given the identical and egregious unfair labor practices committed by Petitioners in their *Southland Knitwear* corporate guise, their claim that they should be considered "first offenders" by virtue of their having manipulated the corporate form in an attempt to evade the Board's first remedial order against them is duplicitous.

Petitioners' other attempts to distinguish their flagrantly unlawful conduct from that warranting the imposition of union access remedies in the past are equally meritless, all turning on the mistaken proposition that it is some quality of the employer's conduct, rather than the effect of that conduct on the workers, which guides the analysis. *Cf. Teamsters Local 115*, 640 F.2d at 392. For example, Petitioners contend that their conduct does not warrant the imposition of extraordinary remedies because it did not involve violations affecting "massive numbers" of workers. Petition at 14. However, where, as here, there is no doubt that the unfair labor practices at issue are designed to intimidate and coerce an entire workforce, the size of that workforce is

immaterial. Petitioners' contention that its conduct does not warrant the imposition of extraordinary remedies because there was no "persistent pattern of direct involvement by top management" is simply ludicrous. Petition at 14. The Board has found that Beirel Jacobowitz, Petitioners' chief operating officer, manager, and supervisor, "personally committed" the majority of the violations of Section 8(a)(1) of the Act, and "personally engaged in the discriminatory treatment of four of the five" workers discharged, findings that Petitioners do not contest here (SA 126). Indeed, the Board found that Beirel Jacobowitz's "pervasive personal involvement in serious unfair labor practices" was such that he should be required to read the Board's remedial Notice aloud to the workers, or have the Notice read by a Board agent in his presence (SA 126).

Overall there can be no doubt that Petitioners' unlawful conduct, including threats of retaliation, threats to close its plant, retaliatory discharges and layoffs, interrogations, and creation of the impression of surveillance, all accomplished in a degrading and reprehensible manner which involved physical assaults, verbal abuse, and literally torrents of obscenity, created an atmosphere of extreme fear and intimidation. The extraordinary remedies ordered by the Board were plainly necessary in order to dispel the effects of this egregious conduct.

III.

IN THE GARMENT INDUSTRY CONTEXT, THE BOARD'S BROAD REMEDIAL AUTHORITY PROPERLY ENCOMPASSED EACH ALTER EGO COMPONENT OF THE SINGLE INTEGRATED ENTERPRISE.

Petitioners' contention that the Board improperly included 144 Spencer Realty Corp. within the scope of its remedial order

because it did not constitute a single integrated enterprise with the other corporate entities is meritless. The Board's factual findings amply demonstrate that Spencer Realty is part of a single integrated enterprise with the other corporate entities by virtue of an utter lack of arms-length relationship between them. Furthermore, Congress has statutorily acknowledged the unique propensity of garment industry enterprises to manipulate the corporate form in order to evade obligations under the National Labor Relations Act. *See* 29 U.S.C. § 158(e). Therefore, given the garment industry context, the lack of arms-length relationship between the companies, and Petitioners' history of manipulation of the corporate form in order to evade the Board's remedial authority, the determination that Spencer Realty was part of Petitioners' single integrated enterprise was appropriate.

Both the single employer and alter ego doctrines permit the Board to impose liability upon separate corporate entities which function as a single integrated enterprise. The Board considers four factors in making a single employer determination: interrelation of operations, common management, centralized control over labor relations, and common ownership. *See Radio & Television Broadcast Union v. Broadcast Service of Mobile, Inc.*, 380 U.S. 255, 256 (1965). No one component of this test is controlling, and every factor need not be present. *See Penntech Papers, Inc. v. NLRB*, 706 F.2d 18, 25 (1st Cir.), *cert. denied*, 464 U.S. 892 (1983). The specific factual circumstances of each case must be considered, although single employer status always involves an absence of the "arm's length relationship found among unintegrated companies." *Local 627, International Union of Operating Engineers v. NLRB*, 518 F.2d 1040, 1045-1046 (D.C. Cir. 1975), *aff'd on this issue sub nom South Prairie Construction Co. v. Local 627, International Union of Operating Engineers*, 425 U.S. 800 (1976). Courts have stressed that the cornerstone of single employer status is an "overall control of critical matters at the policy level." *Penntech Papers, Inc.*, 708

F.2d at 25; *Sakrete of Northern California, Inc.*, 332 F.2d 902, 907 (9th Cir. 1964), *cert. denied*, 379 U.S. 961 (1965).

In order to determine whether two corporate entities are alter egos of one another, the Board considers whether substantial identity of management, business purpose, operation, equipment, customers, supervision, and ownership exist. *See, e.g., NLRB v. Al Bryant, Inc.*, 711 F.2d 543, 553-554 (3rd Cir. 1983), *cert. denied*, 464 U.S. 1039 (1984). The alter ego doctrine focuses on an employer's attempt to evade its obligations under the Act, or under a collective bargaining agreement, by means of a "sham transaction or a technical change in operations." *Carpenters Local 1846 v. Pratt-Farnsworth, Inc.*, 690 F.2d 489, 508 (5th Cir. 1982), *cert. denied*, 464 U.S. 932 (1983).

These issues have a special resonance here because Petitioners do business within the garment industry. In 1959, Congress enacted the garment industry proviso to Section 8(e) of the National Labor Relations Act, which exempts garment industry firms "performing parts of an integrated process of production" from Section 8(e)'s prohibition against "hot cargo" agreements. 29 U.S.C. § 158(e); *see also R.M. Perlman, Inc. v. New York Coat, Suit, Dress, Rainwear & Allied Workers Union, Local 89-22-1*, 33 F.3d 145, 151 (2nd Cir. 1994). The garment industry proviso was enacted in order to provide the ILG with recourse against widespread manipulation of the corporate form which resulted in the evasion of collective bargaining agreements through the "contracting out" of work previously performed by one company. *See R.M. Perlman, Inc.*, 33 F.3d at 144 ("To avoid being unionized, many inside shop operators stopped making their own goods and instead contracted the work of assembling garments to outside contractors with materials the operator supplied"); *see also Jou-Jou Designs, Inc. v. ILGWU*, 643 F.2d 905 (2nd Cir. 1981); *Danielson v. Coat Suit and Allied Garment Workers Union*, 494 F.2d 1230 (2nd Cir. 1960). The garment

industry proviso recognizes the interrelationship between functional entities in the garment industry, despite the fact that the jobber-contractor interaction is typically an arms-length relationship between entities without common ownership and premises.

Here, Petitioners comprise a single integrated enterprise, or process of production, in the garment industry. Each of the Petitioning corporate entities performed a different garment industry function, selling completed garments to merchants (Skylight), coordinating production (United), sewing the garments (Three Sisters), cutting the garments (Bedford Cutting), and maintaining the physical premises (Spencer Realty). Spencer is owned and managed by the same Jacobowitz family members which own and manage the other corporate entities. Spencer shares the same office space, clerical workers, accounting services, and even filing system with the other corporate entities. The record also demonstrates that Spencer had a less than arms-length relationship with the other Petitioners, including a lack of leases, unexplained periods of rent reduction, and substantial unexplained and unrepaid loans. These findings, none of which are challenged by Petitioners, amply demonstrate that Spencer Realty was both an alter ego of and a single employer with the other Petitioners.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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